# TITLE 69
# PUBLIC UTILITIES AND CARRIERS

## CHAPTER 8

## ELECTRIC UTILITY INDUSTRY RESTRUCTURING

### Part 1 -- General Provisions



### Part 2 -- Public Utilities



### Part 3 -- Cooperative Utilities



### Part 4 -- Public Utilities, Cooperative Utilities, and Electricity Suppliers

**Part 5 -- Transition and Tax Revenue Analysis**



**Part 6 -- Net Metering**



**Part 7 -- Consumer Electricity Support Program (Void)**



---

## Part 1

## General Provisions

**69-8-101. Short title.** This chapter may be cited as the "Electric Utility Industry Restructuring and Customer Choice Act".

**History: En. Sec. 1, Ch. 505, L. 1997.**

**69-8-102. Legislative findings and policy.** The legislature finds and declares the following:

(1) The generation and sale of electricity is becoming a competitive industry.

(2) Montana customers should have the freedom to choose their supplier of electricity and related services in a competitive market as soon as administratively feasible. Affording this opportunity serves the public interest.

(3) The interests of Montana consumers should be protected and the financial integrity of electrical utilities should be fostered.

(4) The public interest requires the continued protection of consumers through:

(a) licensure of electricity suppliers;

(b) provision of information to consumers regarding electricity supply service;

(c) provision of a process for investigating and resolving complaints;

(d) continued funding for public purpose programs for:

(i) cost-effective local energy conservation;

(ii) low-income customer weatherization;

(iii) renewable resource projects and applications;

(iv) research and development programs related to energy conservation and renewables;

(v) market transformation; and

(vi) low-income energy assistance;

(e) assurance of service reliability and quality; and

(f) prevention of anticompetitive and abusive activities.

(5) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive electricity supply market, including the consideration of the existence of universal system benefits programs and the comparable level of funding for those programs throughout the regions neighboring Montana.

**History: En. Sec. 2, Ch. 505, L. 1997.**

**69-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electrical energy, and takes title to electrical energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electrical energy but that does not take title to electrical energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a distribution services provider or a person that has received a default supplier license from the commission.

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(10) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(13) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(14) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(15) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

(16) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

(17) "Local governing body" means a local board of trustees of a rural electric cooperative.

(18) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(19) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(20) "Net metering system" means a facility for the production of electrical energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(21) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(22) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electricity supply for all residential and commercial customers.

(23) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(24) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

(25) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

(26) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

(27) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(28) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(29) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(30) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(31) "Transition period" means the period ending July 1, 2007.

(32) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(33) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(34) "Transmission services provider" means a person controlling or operating transmission facilities.

(35) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

(36) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

(37) "Utility" means any public utility or cooperative utility.

**History: En. Sec. 3, Ch. 505, L. 1997; amd. Sec. 2, Ch. 323, L. 1999; amd. Sec. 29, Ch. 575, L. 1999; amd. Sec. 2, Ch. 580, L. 1999; amd. Sec. 62, Ch. 7, L. 2001; amd. Sec. 8, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 1, Ch. 584, L. 2001.**

## Compiler's Comments

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

**69-8-104. Pilot programs.** (1) Except as provided in 69-8-201(3) and 69-8-311, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in 69-8-501 on or before July 1, 2005.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for small customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of small customers;

(c) the electricity suppliers' interest in serving small customers and the opportunities in providing service to small customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to small customers.

**History: En. Sec. 4, Ch. 505, L. 1997; amd. Sec. 9, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 2, Ch. 584, L. 2001.**

## Compiler's Comments

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

**69-8-105 through 69-8-109 reserved.**

**69-8-110. Terminated.** Sec. 5, Ch. 582, L. 2001.
**History: En. Sec. 1, Ch. 582, L. 2001.**

## Part 2

## Public Utilities

**69-8-201. Public utility -- transition to customer choice -- waiver.** (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) All customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Before July 1, 2007, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) The commission shall designate the public utility or one or more default suppliers to provide regulated default service for those small customers of a public utility that are not being served by a competitive electricity supplier.

(3) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory.

(4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section.

**History: En. Sec. 5, Ch. 505, L. 1997; amd. Sec. 30, Ch. 575, L. 1999; amd. Sec. 1, Ch. 175, L. 2001; amd. Sec. 10, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 3, Ch. 584, L. 2001.**

## Compiler's Comments

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

**69-8-202. Public utility -- transition plans.** (1) All public utilities, pursuant to this chapter, shall submit a transition plan to the commission. Plans must be filed with the commission not later than 1 year before the date by which any customers of the public utility are entitled to choice of electricity supplier pursuant to 69-8-201. The commission may develop a schedule for public utilities that are required to file plans. The transition plan must demonstrate that the public utility meets all the requirements of this chapter.

(2) The commission shall develop a procedural schedule that includes:

(a) a preliminary transition plan determination including the commission's findings on whether the plan is complete and adequate subject to the requirements of this chapter; and

(b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

(3) Unless waived by the public utility, the commission shall issue a final order approving, modifying, or denying the transition plan before 9 months after the date a public utility files a plan. All parties are afforded an opportunity for hearing before issuance of the final order.

(4) The commission shall process a request for approval of a transition plan pursuant to the contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(5) On approval of the plan, the commission shall enforce the public utility obligations as incorporated in the plan and in the commission's final order.

**History: En. Sec. 6, Ch. 505, L. 1997.**

**69-8-203. Public utility -- customer choice -- continued service -- education of customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in 69-8-201. Public utilities shall propose a method for customers to choose an electricity supplier.

(2) If a customer has not chosen an electricity supplier by the end of the transition period, a city, county, or consolidated government that is licensed as an electricity supplier may, upon application to and approval by the commission, become the default supplier to residential and commercial customers of a public utility within its jurisdiction. For customers that are not within the jurisdiction of a licensed and approved city, county, or consolidated government electricity supplier area, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier. The commission shall establish an application process and guidelines for the designation of one or more default suppliers for the distribution area of each public utility.

(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in 69-8-201.

(4) Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period.

**History: En. Sec. 7, Ch. 505, L. 1997; amd. Sec. 1, Ch. 185, L. 1999; amd. Sec. 11, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002).**

## Compiler's Comments

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

**69-8-204. Public utility -- functional separation, divestiture, and nondiscrimination.** (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

(2) The commission may not order a public utility to divest itself of any generation assets or prohibit a public utility from divesting itself voluntarily of any generation assets.

(3) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

(4) The provisions of this section are satisfied if the public utility adopts and complies with a code of conduct consistent with the federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

**History: En. Sec. 8, Ch. 505, L. 1997.**

**69-8-205 through 69-8-207 reserved.**

**69-8-208. Public utility -- distribution services.** (1) A public utility's distribution services provider shall:

(a) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) When a distribution services provider acts as an emergency supplier of electricity and related services to customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider at the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The commission shall determine and authorize the multiple used. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

**History: En. Sec. 9, Ch. 505, L. 1997.**

**69-8-209. Public utilities -- transmission services.** For transmission services regulated by the commission, public utilities, through filed tariffs, shall make transmission services available for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and by customers.

**History: En. Sec. 10, Ch. 505, L. 1997.**

**69-8-210. Public utilities -- electricity supply.** (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended, then the customers' distribution services provider shall:

(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term of not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.

(4) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404.

**History: En. Sec. 11, Ch. 505, L. 1997; amd. Sec. 12, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002).**

## Compiler's Comments

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

**69-8-211. Public utilities -- transition costs and charges -- rate moratorium.** (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in this chapter, only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a public utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by this chapter may not collect transition charges with respect to these transition costs.

(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period from July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of 69-8-201(1)(b), public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) the increase or decrease in the annual state and local property tax expense that has occurred since May 2, 1997.

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).

(10) Before July 1, 2002, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings.

**History: En. Sec. 12, Ch. 505, L. 1997; amd. Sec. 31, Ch. 556, L. 1999; amd. Sec. 13, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 4, Ch. 584, L. 2001.**

## Compiler's Comments

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

## Part 3

## Cooperative Utilities

**69-8-301. Cooperative utility -- transition plan for customer choice.** (1) Except as provided in 69-8-311, on or before July 1, 2006, the local governing body of a cooperative utility shall adopt a transition plan.

(2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that may not end later than July 1, 2007. At the conclusion of the transition period, all customers must have the opportunity to choose an electricity supplier.

(b) If after a pilot program for customers of a cooperative utility with loads less than 1,000 kilowatts a competitive market, technology, or other conditions precedent to full customer choice have not developed, then the transition plan may be altered by the cooperative utility's governing body for those customers.

(3) This chapter does not require the cooperative utility to divest itself of any generation, transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those assets.

(4) A cooperative utility's local governing body shall certify to the commission that the local governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative utility shall provide to the commission documentation that the cooperative utility's transition plan is consistent with this chapter.

**History: En. Sec. 13, Ch. 505, L. 1997; amd. Sec. 5, Ch. 584, L. 2001.**

**69-8-302. Cooperative utility -- customer choice -- education of customers -- continued service.** (1) Except as provided in 69-8-311, cooperative utilities shall propose a method for cooperative utility customers to choose an electricity supplier.

(2) Customer choice may be phased in to promote the orderly transition to a competitive market environment.

(3) Cooperative utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period.

(4) If a cooperative utility customer has not chosen an electricity supplier by the end of the transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity supplier designated by the cooperative utility.

**History: En. Sec. 14, Ch. 505, L. 1997.**

**69-8-303. Cooperative utility -- functional separation.** (1) To the extent that a cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets and operations in the state of Montana. If the cooperative utility intends to exercise this option, the cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

(2) A cooperative utility shall describe in the transition plan measures taken by the cooperative utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and in favor of the cooperative utility's affiliates, if any.

(3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory commissions code of conduct established in 18 CFR, part 37.

**History: En. Sec. 15, Ch. 505, L. 1997.**

**69-8-304. Cooperative utility -- distribution services.** (1) A cooperative utility transition plan must include distribution facility tariffs that must be established by the cooperative utility's local governing body and must include the obligation for the cooperative utility to:

(a) make distribution services available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) If a distribution services provider acts as an emergency supplier of electricity and related services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual obligations shall reimburse the distribution services provider at an amount to be set by the local governing body but may not exceed the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

(3) Recoverable costs for cooperative utilities must be based upon standard financial reporting statements and may reflect comparable rates of return of other utilities.

**History: En. Sec. 16, Ch. 505, L. 1997.**

**69-8-305 through 69-8-307 reserved.**

**69-8-308. Cooperative utility -- transmission services.** Transition plans must state whether the cooperative utility's transmission services, if any, are regulated by the federal energy regulatory commission. If those services are not regulated by the federal energy regulatory commission, the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers, distribution services providers, and customers. A cooperative utility's local governing body shall establish the cooperative utility's transmission tariffs.

**History: En. Sec. 17, Ch. 505, L. 1997.**

**69-8-309. Cooperative utility -- electricity supply.** (1) A transition plan may provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer electricity supply service. The local governing body shall establish the price for electricity supply service offered by a cooperative utility.

(2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions of 69-8-404.

(3) If a cooperative utility offers electricity supply service competitively to customers using a public utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar structure to serve those customers that allows the entity to be taxed at the same level as other for-profit electricity suppliers.

**History: En. Sec. 18, Ch. 505, L. 1997.**

**69-8-310. Cooperative utility -- transition costs and charges.** (1) For the purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may not be recoverable as a result of the transition to a competitive market for electricity supply service.

(2) Transition costs eligible for treatment include but are not limited to:

(a) regulatory assets and deferred charges typically recoverable in rates;

(b) nonutility and utility power purchase contracts;

(c) existing commitments or obligations incurred before May 2, 1997, and other cooperative utility investments rendered uneconomic as a result of the implementation of this chapter or the introduction of retail wheeling through federal legislation or regulation;

(d) costs associated with any renegotiation or buyout of the existing nonutility and utility power purchase contracts;

(e) revenue that appears as a portion of a facility charge necessary to meet debt service requirements, including any coverage amounts required by any mortgage, indenture, or other financing document;

(f) costs of refinancing and retiring debt of the cooperative utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers; and

(g) all costs, expenses, and reasonable fees related to transition bonds.

(3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall make reasonable efforts to mitigate those transition costs.

(4) Cooperative utilities may not collect any more costs, including costs reallocated to transition costs, at a level higher than would otherwise be anticipated had the current regulatory system remained intact, with the exception of:

(a) increased costs related to universal system benefits charges; and

(b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.

(5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution facilities in the receipt of electricity supply services.

(6) A cooperative utility may not collect transition costs from a customer for which the cooperative utility does not have and never has had an obligation to incur costs to provide electricity supply service unless the unmitigated transition costs were incurred solely on behalf of the customer.

(7) Approval of and collection of transition costs through a transition charge is a settlement of all transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through any other means may not collect transition charges.

**History: En. Sec. 19, Ch. 505, L. 1997.**

**69-8-311. Cooperative utility -- exemption.** (1) Within 1 year after May 2, 1997, a cooperative utility may file a notice with the commission that the cooperative utility does not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant to 69-8-402, a cooperative utility filing notice under this section is exempt from the provisions and requirements of this chapter.

(2) A cooperative utility filing a notice under this section:

(a) may elect later to adopt a transition plan in accordance with this chapter; and

(b) may not use a public utility's distribution facilities unless preexisting contracts exist.

**History: En. Sec. 20, Ch. 505, L. 1997.**

## Part 4

## Public Utilities, Cooperative Utilities, and Electricity Suppliers

**69-8-401. Maintaining safety and reliability.** Utilities shall maintain standards of safety and reliability of the electric delivery system and existing customer service requirements.

**History: En. Sec. 21, Ch. 505, L. 1997.**

**69-8-402. Universal system benefits programs.** (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to

its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. Except as provided in subsection (7), these universal system benefits charge rates must remain in effect until July 1, 2003.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income related expenditures, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and to the transition advisory committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large

customer credit, the utility may be financially responsible for any subsequent disallowance.

**History: En. Sec. 22, Ch. 505, L. 1997; amd. Sec. 3, Ch. 580, L. 1999; amd. Sec. 1, Ch. 188, L. 2001; amd. Sec. 14, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002).**

## Compiler's Comments

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

**69-8-403. Commission authority -- rulemaking authority.** (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of electricity supply except as electricity supply may be procured as provided in this section:

(a) by one or more default suppliers for those customers not being served by a competitive supplier; or

(b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

(4) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(5) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

(6) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(7) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.

(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.

(10) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.

(11) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

(12) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter.

**History: En. Sec. 23, Ch. 505, L. 1997; amd. Sec. 31, Ch. 575, L. 1999; amd. Sec. 15, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002).**

## Compiler's Comments

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

**69-8-404. Licensing.** (1) Except as provided in 69-8-311, an electricity supplier shall file an application with and obtain a license from the commission before offering electricity for sale to retail customers in the state of Montana.

(2) As a condition of licensing, an electricity supplier shall identify and describe its activities and purposes and the purposes of each of the electricity supplier's affiliates, if any, including whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair, and nondiscriminatory access to the electricity supplier's or the electricity supplier's affiliates distribution facilities.

(3) The commission may require electricity suppliers that provide electricity supply service to small customers to make a standard service offer that ensures that those customers have access to affordable electricity.

(4) The commission may require:

(a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to obtain those reserves; and

(b) a licensee to post a bond should an electricity supplier fail to supply electricity or lack financial integrity.

(5) An electricity supplier shall provide the commission and all distribution services providers with copies of all license applications pursuant to subsection (2). Licensees shall update information and file annual reports with the commission and all distribution services providers.

(6) License applications are effective 30 days after filing with the commission unless the commission rejects the application during that period. If the commission rejects a license application, the commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome deficiencies.

(7) Notwithstanding this chapter, a cooperative utility is not required to apply for a license from the commission to be an electricity supplier to customers served by that cooperative utility in its electric facilities service territory or to any customers served by another cooperative utility subject to the consent of the other cooperative utility's local governing body.

**History: En. Sec. 24, Ch. 505, L. 1997.**

**69-8-405 through 69-8-407 reserved.**

**69-8-408. Penalties -- license revocation.** (1) The commission may begin a proceeding to revoke or suspend a license of an electricity supplier, impose a penalty,

or both, for just cause on the commission's own investigation or upon the complaint of an affected party if it is established that the electricity supplier:

(a) intentionally provided false information to the commission;

(b) switched, or caused to be switched, the electricity supply for a customer without first obtaining the customers written permission;

(c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; or

(d) committed fraud or engaged in deceptive practices.

(2) Any person selling or offering to sell electricity in this state in violation of 69-8-404, 69-8-410, and this section is subject to a fine of not less than $100 or more than $1,000 for the violation or a license revocation or suspension. Each day of each violation constitutes a separate violation.

(3) The fine must be recovered in a civil action upon the complaint by the commission in any court of competent jurisdiction.

(4) A license revocation proceeding under this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

**History: En. Sec. 25, Ch. 505, L. 1997.**

**69-8-409. Bill information -- customer nonpayment -- commission rulemaking.** (1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules promulgated by the commission. Electrical bills must disclose but are not limited to the following:

(a) distribution and transmission charges;

(b) electricity supply charges;

(c) competitive transition charges; and

(d) universal system benefits charges.

(2) The commission shall promulgate rules establishing the procedures relating to how and when an electricity supplier may discontinue service to a customer because of the customers nonpayment and the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that are cooperative utilities.

(3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities regarding:

(a) customer nonpayment and reconnection; and

(b) information contained in electrical bills to consumers.

**History: En. Sec. 26, Ch. 505, L. 1997.**

**69-8-410. Unauthorized switching -- commission rulemaking.** (1) An electricity supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity supplier for a customer without first obtaining the customer's written permission.

(2) The commission shall promulgate rules establishing procedures to prevent unauthorized switching.

**History: En. Sec. 27, Ch. 505, L. 1997.**

**69-8-411. Nondiscriminatory access -- reciprocity.** Except as provided in 69-8-311, all electricity suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable opportunity to compete. A distribution services provider or the distribution services provider's affiliates may not use another distribution services provider's facilities in the state of Montana to sell electricity to customers in the state of Montana unless the first distribution services provider or the distribution

services provider's affiliates offer comparable and nondiscriminatory access to the distribution services provider's distribution facilities within the state of Montana.

**History: En. Sec. 28, Ch. 505, L. 1997; amd. Sec. 4, Ch. 580, L. 1999.**

**69-8-412. Funds established -- fund administrators designated -- purpose of funds -- department rulemaking authority to administer funds.** (1) If, pursuant to 69-8-402(2)(f) or (5)(b), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or both of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual statewide funding assessment that identifies funding needs in universal system benefits programs. The annual assessment must take into account existing utility and large customer universal system benefits programs expenditures.

**History: En. Sec. 5, Ch. 580, L. 1999; amd. Sec. 16, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002).**

## Compiler's Comments

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

**69-8-413. Department rulemaking authority.** (1) The department of revenue shall adopt rules on or before September 1, 1999, specifying acceptable universal system benefits programs credits and expenditures and adopting procedures for challenged credits.

(2) Rules adopted pursuant to this part must be adopted in accordance with the Montana Negotiated Rulemaking Act, Title 2, chapter 5, part 1.

(3) Universal system benefits programs credits claimed or expenditures made prior to the adoption of the rules under subsection (1) must be allowed and are not subject to the requirements of 69-8-414.

**History: En. Sec. 6, Ch. 580, L. 1999.**

**69-8-414. Universal system benefits programs credit review process.** (1) All annual reports required pursuant to 69-8-402(8) and (10) must be filed with the department of revenue on March 1 of each year.

(2) Except as provided in 69-8-413, upon a challenge by an interested person, the department of revenue shall ensure that the credit claimed is consistent with this chapter. An interested person may file comments challenging the claim, including supporting documentation, with the department of revenue. A challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit claimant's annual reports required pursuant to 69-8-402(8) and (10).

(3) Claimed credits are presumed to be correct unless challenged by an interested person. If a challenge is filed by an interested person, the department of revenue shall conduct an initial review of a challenged credit and shall make a determination as to the likelihood that the challenged credit qualifies for universal system benefits programs. If the department of revenue finds that the challenged credit is not likely to qualify for universal system benefits programs, the department of revenue shall formally review the challenge; otherwise, the department of revenue shall dismiss the challenge and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may request additional information from the credit claimant or interested person. The department of revenue shall complete the initial review within 30 days of the challenge.

(4) If the department of revenue determines that a formal review of a challenged credit is necessary, the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide public notice of the hearing to the credit claimant and interested persons.

(5) For a formal credit review challenge, the following procedures apply:

(a) The credit claimant shall provide documentation supporting the credit claimed to the department of revenue and to all interested persons, subject to department of revenue protective orders for confidential or sensitive materials, upon a showing of a privacy interest by the credit claimant.

(b) The department of revenue shall make all materials related to the claim, the challenge, and the submitted comments available to the credit claimant and for public inspection and photocopying, subject to any department of revenue protective orders.

(c) The credit claimant may respond in writing to any comments and other documents filed by an interested person.

(d) The department of revenue may ask for additional detailed information to implement this section.

(6) Upon completing a formal review of a challenged credit, the department of revenue shall make a decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged credit, including the department of revenue's final decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to comment on the challenged credit.

**History: En. Sec. 7, Ch. 580, L. 1999; amd. Sec. 17, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002).**

## Compiler's Comments

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

**69-8-415 reserved.**

**69-8-416. Default supplier license.** (1) In developing licensing rules for default suppliers, the commission shall promote and facilitate the development of a competitive market for electricity supply.

(2) Default supplier licensing rules must ensure that:

(a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more;

(b) a default supplier may not discount its commission-approved rates to retain or gain customers;

(c) a default supplier may not obligate customers to a contractual term or service;

(d) federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers and in a manner that encourages competition;

(e) a default supplier, except when the default supplier is the distribution services provider, may not construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems owned by others to supply electricity to its customers in the state;

(f) a default supplier may not offer for sale any products other than electricity supply or provide electricity supply to members or customers other than those residing in the state or sell electricity or otherwise engage in the marketing of electricity on the wholesale market, but may dispose of excess electricity associated with temporary load-energy imbalances.

(3) Except as provided in subsection (2)(e), a default supplier may provide only a single electricity supply service to all of its small customers. A default supplier may also offer an additional electricity supply service that includes a component of renewable energy.

(4) A default supplier may not offer other supply services unless the default supplier forms a separate entity.

**History: En. Sec. 32, Ch. 575, L. 1999; rep. Sec. 30, Ch. 577, L. 2001 (repealer voided by I.R. No. 117, Nov. 5, 2002).**

## Compiler's Comments

2001 Repeal Rejected: The repeal of this section made by Ch. 577, L. 2001 (House Bill No. 474), was rejected by the electorate in a referendum held November 5, 2002.

**69-8-417. Default supplier -- license revocation.** The commission may revoke default supplier status for just cause on the commission's own investigation or upon complaint of an affected party, if it finds that the default supplier has violated the terms of default supplier status. Upon revocation, default supplier status reverts to the public utility, unless and until the commission grants new default supplier status to another person. The public utility must be given sufficient notice to acquire supply to serve this load and shall fully recover its costs of reentering the default supplier business.

**History: En. Sec. 33, Ch. 575, L. 1999; rep. Sec. 30, Ch. 577, L. 2001 (repealer voided by I.R. No. 117, Nov. 5, 2002).**

## Compiler's Comments

2001 Repeal Rejected: The repeal of this section made by Ch. 577, L. 2001 (House Bill No. 474), was rejected by the electorate in a referendum held November 5, 2002.

## Part 5

## Transition and Tax Revenue Analysis

**69-8-501. Transition advisory committee.** (1) A transition advisory committee on electric utility industry restructuring is created. The transition advisory committee is composed of twelve voting members who are appointed as follows:

(a) The speaker of the house shall appoint six members from the house of representatives, not more than three of whom may be from one political party.

(b) The president of the senate shall appoint six members from the senate, not more than three of whom may be from one political party.

(2) The following entities shall appoint nonvoting advisory representatives to the transition advisory committee:

(a) The director of the department of environmental quality shall appoint one department representative.

(b) The legislative consumer committee shall appoint one representative.

(c) One representative of the cooperative utility industry is appointed as designated by the Montana electrical cooperative association.

(d) The public utilities in the state of Montana shall appoint one member.

(e) The commission shall appoint one member.

(f) The governor shall appoint the following nonvoting committee members:

(i) one representative from the industrial community with an interest in the restructuring of the electric utility industry;

(ii) one representative from the nonindustrial retail electric consumer sector;

(iii) one representative from organized labor;

(iv) one representative from the community comprising environmental and conservation interests;

(v) one representative from a low-income program provider;

(vi) one representative of Montana's Indian tribes; and

(vii) one representative of the electric power market industry.

(3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(4) Legislative members are entitled to salary and expenses as provided in 5-2-302.

(5) The public service commission, legislative services division, and appropriate state agencies shall provide staff assistance as requested by the committee.

(6) Transition advisory committee members must be appointed to terms for up to 2 years, expiring on January 1 of odd-numbered years.

(7) The voting members shall select a transition advisory committee presiding officer.

(8) The transition advisory committee on electric utility industry restructuring must dissolve on December 31, 2007.

(9) The transition advisory committee shall provide an annual report on the status of electric utility restructuring on or before November 1 to the governor, the speaker of the house, the president of the senate, and the commission.

(10) The transition advisory committee shall meet at least quarterly or as often as is necessary to conduct its business.

(11) The transition advisory committee shall analyze and report on the transition to effective competition in the competitive electricity supply market.

(12) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

(13) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

(14) The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in 69-8-402 to coincide with the related activities of the region at that time.

(15) On or before July 1, 2002, the transition advisory committee, in coordination with the commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be provided for, if necessary.

(16) On or before November 1 of each odd-numbered year, the transition advisory committee shall collect information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the opportunity provided pursuant to this chapter to utilities or their affiliates located outside the state of Montana. That information must be included in a report to each legislature.

**History: En. Sec. 29, Ch. 505, L. 1997; amd. Sec. 1, Ch. 372, L. 1999; amd. Sec. 6, Ch. 584, L. 2001.**

**69-8-502. Tax revenue analysis.** The revenue and transportation interim committee, as provided for in 5-5-227, shall analyze the amount of state and local tax revenue derived from previously regulated electricity suppliers that will enter the competitive market and report to the legislature annually on how revenue to the state or local government is changed by restructuring and competition.

**History: En. Sec. 30, Ch. 505, L. 1997; amd. Sec. 63, Ch. 7, L. 2001.**

**69-8-503. Transition costs financing.** (1) A utility may, after July 1, 1997, apply to the commission for a determination that certain transition costs may be recovered through the issuance of transition bonds. If transition bonds are issued, cost savings associated with and resulting from the bonds must benefit customers. After the issuance of a financing order, the utility retains sole discretion regarding whether to sell, assign,

or otherwise transfer or pledge transition property or to cause the transition bonds to be issued, including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance. If transition bonds are not issued within 4 years of the issuance of the financing order, the financing order must terminate. The utility may apply for an extension or renewal of a financing order.

(2) (a) The commission may issue financing orders in accordance with this section to facilitate the recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property. A financing order may be adopted only upon the application of a utility and may only become effective in accordance with its terms after the utility files with the commission the utility's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a customer are allocated between fixed transition amounts and other charges.

(b) A financing order must include, without limitation, a procedure for the expeditious approval by the commission of periodic adjustments to nonbypassable rates and charges associated with fixed transition amounts included in the order to ensure recovery of all transition costs and the costs of capital associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The order must set forth the term over which the transition bonds are to be paid, but those terms may not exceed 20 years. These adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section with respect to transition property that has been made the basis for the issuance of transition bonds and upon the issuance of transition bonds, the financing orders and the fixed transition amounts must be irrevocable.

(b) If transition bonds have been issued, the commission may not by rescinding, altering, or amending the financing order or otherwise:

(i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property;

(ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

(iii) in any way reduce or impair the value of transition property either directly or indirectly by taking fixed transition amounts into account when setting other rates for the utility.

(c) The total amount of the transition property may not be subject to reduction, impairment, postponement, or termination.

(d) Except as otherwise provided in this section, the state pledges and agrees with the assignees and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed transition amounts, transition property, financing orders, or any right under the bonds until the bonds, together with the interest on the bonds, are fully met and discharged. The board, as agent for the state, is authorized to include this pledge and undertaking for the state in these bonds.

(e) Notwithstanding any other provision of this section, the commission shall approve those adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition costs that are the subject of the pertinent financing order and the costs of capital associated with the recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property including

the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision of the state if issued through the board and do not constitute a pledge of the full faith and credit of the state or any of the state's political subdivisions if issued through the board. The financing orders are payable solely from the funds provided under this section. The bonds and offering documents must contain on their face a statement to the following effect:

This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any political subdivision of the state of Montana within any constitutional or statutory provision. Neither the full faith and credit nor the taxing power of the state of Montana is pledged to the payment of the principal or interest on this bond, and neither the state of Montana nor any political subdivision of the state of Montana is obligated, directly, indirectly, or contingently, to levy or to pledge any form of taxation or to make any appropriation for the payment of this bond. This bond is a limited obligation of the issuer, payable solely out of the transition property or the proceeds of that property specifically pledged for its payment and not otherwise.

(b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any appropriation for bond payment.

(5) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval of applications within 120 days after a utility submits a complete application. The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine on each anniversary of the issuance of the financing order and at additional intervals as may be provided for in the financing order whether the adjustments are required and shall provide for the adjustments, if required, to be approved within 60 days of each anniversary of the issuance of the financing order or of each additional interval provided for in the financing order.

(6) Fixed transition amounts become transition property when and to the extent that a financing order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and the transition property must thereafter continuously exist as property for all purposes with all of the rights and privileges of this chapter for the period and to the extent provided in the financing order or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages on the transition bonds.

(7) Transition bonds may be issued upon commission approval in the pertinent financing order. Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility, other than the transition property as specified in the pertinent financing order.

(8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest in that transition property to one or more assignees in connection with the issuance of transition bonds to the extent approved in the pertinent financing order.

(b) A utility or an assignee may pledge transition property as collateral for transition bonds to the extent approved in the pertinent financing order and may provide for a security interest in the transition property as provided in this section.

(c) Transition property may be sold, assigned, or transferred for the benefit of:

(i) transition bondholders in connection with the exercise of remedies upon a default; or

(ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this section.

(9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will, subject to the utility's rights under subsection (18):

(i) continue to operate the utility's system and to provide service to the utility's customers;

(ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the assignee; and

(iii) account for and remit these amounts to or for the account of the assignee.

(b) Contracting with the assignee in accordance with the commission's authorization may not impair or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute assignment or transfer, or a grant of a security interest, as applicable.

(10) Notwithstanding any other provision of law, any provision under this section or under a financing order requiring that the commission take or refrain from taking action with respect to the subject matter of a financing order binds the commission and any successor commission or agency exercising functions similar to the commission, and the commission or any successor commission or agency may not rescind, alter, or amend that requirement in a financing order.

(11) A pledge or any other security interest in transition property is valid, is enforceable against the pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, and attaches only when all of the following have taken place:

(a) the commission has issued the financing order authorizing the fixed transition amounts included in the transition property;

(b) value has been given by the pledgees of the transition property; and

(c) the pledgor has signed a security agreement or other financing-related agreement covering the transition property.

(12) (a) A valid and enforceable security interest in transition property is perfected only when it has attached and when a financing statement has been filed with the secretary of state in accordance with procedures that the secretary of state may establish. The financing statement must name the pledgor of the transition property as debtor and identify the transition property.

(b) Any description of the transition property is sufficient if the description refers to the financing order creating the transition property.

(c) The commission may require other filings with respect to the security interest in accordance with procedures the commission may establish, except that these filings may not affect the perfection of the security interest.

(13) A perfected security interest in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or proceeds have accrued. Conflicting security

interests must rank according to priority in time of perfection. Transition property constitutes property for all purposes, including for contracts securing transition bonds, whether or not the revenue and proceeds arising with respect to the transition property have accrued.

(14) (a) Subject to the terms of the security agreement covering the transition property and the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by:

(i) the commingling of revenue arising with respect to the transition property with other funds of the utility that is the pledgor or transferor of the transition property; or

(ii) any security interest of any third party in a deposit account of that utility perfected under Title 30, chapter 9A, part 3, into which the revenue is deposited.

(b) Subject to the terms of the security agreement, upon compliance with the requirements of this section, a pledgee of the transition property has a perfected security interest in all cash and deposit accounts of the utility in which revenue arising with respect to the transition property has been commingled with other funds, but the perfected security interest must be limited to an amount no greater than the amount of the revenue with respect to the transition property received by the utility within 12 months before any default under the security agreement or the institution of insolvency proceedings by or against the utility, less payments from the revenue to the pledgees during that 12-month period.

(15) (a) If a default occurs under the security agreement covering the transition property, a pledgee of the transition property, subject to the terms of the security agreement, has all rights and remedies of a secured party upon default under Title 30, chapter 9A, part 6, and is entitled to foreclose or otherwise enforce the pledgee's security interest in the transition property, subject to the rights of any third parties holding prior security interests in the transition property perfected in the manner provided in this section.

(b) The commission may require in the financing order creating the transition property that in the event of default by the utility in payment of revenue arising with respect to the transition property, the commission and any successor to the commission, upon the application by a pledgee or assignee of the transition property and without limiting any other remedies available to the pledgees or transferees by reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or transferor of the transition property.

(c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the transition bonds and other costs arising under the security agreement must be remitted to the debtor or to the pledgor as provided in the security agreement.

(16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute transfer of all of the transferors right, title, and interest, as in a true sale, and not as a pledge or other financing of the transition property, other than for federal and state income and franchise tax purposes.

(b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must be treated as a pledge or other financing unless the governing documentation of transfer specifically states that the transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the characterization of the transfer as a pledge or other financing for federal tax purposes.

(17) A sale, assignment, or other transfer of transition property may only be considered perfected as against any third person, including any judicial lien creditor, when both of the following have taken place:

(a) the financing order authorizing the fixed transition amounts included in the transition property has become effective in accordance with subsection (2); and

(b) an assignment of the transition property, in writing, has been executed and delivered to the transferee.

(18) (a) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the secretary of state in accordance with procedures that the secretary of state may establish has priority. The financing statement must name the assignor of the transition property as debtor and must identify the transition property. Any description of the transition property is sufficient if the description refers to the financing order creating the transition property. The commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings may not affect the perfection of the transfer.

(b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged to secure transition bonds.

(19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in the definition of transition property, whether before or after the issuance of a financing order, does not constitute an account or general intangibles as those terms are defined in 30-9A-102. Any right, title, or interest pertaining to a financing order, including the interest pertaining to a financing order, along with the associated transition property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or interest other than in the order and the transition property arising from the order.

(20) The lien under this section is enforceable against the pledgor and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition property previously perfected in the manner described in this section if value has been given by the purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the associated transition property, whether or not revenue has been accrued. Transition property constitutes property for the purposes of contracts securing transition bonds, whether or not the related revenue

has accrued. The lien created under this section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the transition property, to the fixed transition costs, and to the financing order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this section is not defeated or adversely affected by changes to the financing order or to the fixed transition amounts payable by any customer.

(21) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this section and may provide that transfers of transition property to an assignee be filed in accordance with the same system.

(22) Any sale, assignment, or other transfer of transition property or any pledge of transition property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

(23) The transition bonds issued under this chapter are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with the state securities commissioner.

(24) The granting, perfection, and priority of security interests with respect to transition property and the proceeds thereof are governed by this section rather than by Title 30, chapter 9A.

(25) Upon the payment in full of transition bond principal and interest, the utility shall discontinue charging and collecting the competitive transition charge associated with that portion of the utility's approved transition costs.

(26) The commission may, by order or rule and subject to terms and conditions that it may prescribe, exempt any security or class of securities for which an application is required under this title or any public utility or class of public utility from the provisions of this title if it finds that the application of this title to the security, class of security, public utility, or class of public utility is not required by the public interest.

**History: En. Sec. 31, Ch. 505, L. 1997; amd. Sec. 151, Ch. 305, L. 1999.**

## Part 6

## Net Metering

**69-8-601. Legislative findings.** The legislature finds that it is in the public interest to promote net metering because it:

(1) encourages private investment in renewable energy resources;

(2) stimulates Montana's economic growth; and

(3) enhances the continued diversification of the energy resources used in Montana.

**History: En. Sec. 1, Ch. 323, L. 1999.**

**69-8-602. Distribution services provider net metering requirements.** A distribution services provider shall:

(1) allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission determines, after appropriate notice and opportunity for comment:

(a) that the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(b) how the costs of net metering are to be allocated between the customer-generator and the distribution services provider; and

(2) charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class. The commission shall determine, after appropriate notice and opportunity for comment if:

(a) the distribution services provider will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these net metering systems; and

(b) public policy is best served by imposing these costs on the customer-generator, rather than allocating these costs among the distribution services provider's entire customer base.

**History: En. Sec. 3, Ch. 323, L. 1999.**

**69-8-603. Net energy measurement calculation.** Consistent with the other provisions of this part, the net energy measurement must be calculated in the following manner:

(1) The distribution services provider shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electricity supplier exceeds the electricity generated by the customer-generator and fed back to the electricity supplier during the billing period, the customer-generator must be billed for the net electricity supplied by the electricity supplier, in accordance with normal metering practices.

(3) If electricity generated by the customer-generator exceeds the electricity supplied by the electricity supplier, the customer-generator must be:

(a) billed for the appropriate customer charges for that billing period, in accordance with 69-8-602; and

(b) credited for the excess kilowatt hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

(4) On January 1, April 1, July 1, or October 1 of each year, as designated by the customer-generator as the beginning date of a 12-month billing period, any remaining unused kilowatt-hour credit accumulated during the previous 12 months must be granted to the electricity supplier, without any compensation to the customer-generator.

**History: En. Sec. 4, Ch. 323, L. 1999; amd. Sec. 1, Ch. 328, L. 2001.**

**69-8-604. Net metering system -- reliability and safety.** (1) A net metering system used by a customer-generator must include, at the customer-generator's own expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the national electrical code, national electrical safety code, institute of electrical and electronic engineers, and underwriters laboratories.

(2) The commission, after appropriate notice and opportunity for comment, may adopt by rule additional safety, power quality, and interconnection requirements for customer-generators that the commission or the local governing body determines are necessary to protect public safety and net metering system reliability.

**History: En. Sec. 5, Ch. 323, L. 1999.**

**69-8-605. Applicability.** This part does not apply to corporations organized under Title 35, chapter 18.

**History: En. Sec. 6, Ch. 323, L. 1999.**

**Part 7**

## Consumer Electricity Support Program (Void)

### Part Compiler's Comments

2001 Enactment Rejected: The enactment of this part by Ch. 577, L. 2001 (House Bill No. 474), was removed from the Montana Code Annotated because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

**69-8-701. Void.** I.R. No. 117, Nov. 5, 2002.
**History: En. Sec. 18, Ch. 577, L. 2001.**

**69-8-702. Void.** I.R. No. 117, Nov. 5, 2002.
**History: En. Sec. 19, Ch. 577, L. 2001.**